

Department of Energy

§ 1023.3

determined to be necessary and appropriate, with advance notice to the parties.

(d) The Board provides alternative disputes resolution neutral services and facilities, as agreed between the parties and the Board, for:

(1) Disputes related to the Department's prime contracts and to financial assistance awards made by the Department.

(2) Disputes related to contracts between the Department's cost-reimbursement contractors, including Management and Operating Contractors (M&Os) and Environmental Remediation Contractors (ERMCs), and their subcontractors. Additionally, with the consent of both the responsible prime DOE cost-reimbursement contractor and the cognizant DOE Contracting Officer, the Board may provide neutral services and facilities for disputes under second tier subcontracts where the costs of litigating the dispute might be ultimately charged to the DOE as allowable costs through the prime contract.

(3) Other matters involving DOE procurement and financial assistance, as appropriate.

§ 1023.2 Organization and location of the Board.

(a) *Location of the Board.* (1) The Board's offices are located at, and hand and commercial parcel deliveries should be made to: Board of Contract Appeals, U.S. Department of Energy, 950 L'Enfant Plaza, SW., Suite 810, Washington, DC 20024.

(2) The Board's mailing address is as follows. The entire nine digit ZIP code should be used to avoid delay: Board of Contract Appeals, U.S. Department of Energy, HG-50, Building 950, Washington, DC 20585-0116.

(3) The Board's telephone numbers are (202) 426-9316 (voice) and (202) 426-0215 (facsimile).

(b) *Organization of the Board.* As required by the CDA, the Board consists of a Chair, a Vice Chair, and at least one other member. Members are designated Administrative Judges. The Chair is designated Chief Administrative Judge and the Vice Chair, Deputy Chief Administrative Judge.

§ 1023.3 Principles of general applicability.

(a) *Adjudicatory functions.* The following principles shall apply to all adjudicatory activities whether pursuant to the authority of the CDA, authority delegated under this part, or authority of other laws, rules, or directives.

(1) The Board shall hear and decide each case independently, fairly, and impartially.

(2) Decisions shall be based exclusively upon the record established in each case. Written or oral communication with the Board by or for one party is not permitted without participation or notice to other parties. Except as provided by law, no person or agency, directly or indirectly involved in a matter before the Board, may submit off the record to the Board or the Board's staff any evidence, explanation, analysis, or advice (whether written or oral) regarding any matter at issue in an appeal, nor shall any member of the Board or of the Board's staff accept or consider *partecommunications* from any person. This provision does not apply to consultation among Board members or staff or to other persons acting under authority expressly granted by the Board with notice to parties. Nor does it apply to communications concerning the Board's administrative functions or procedures, including ADR.

(3) Decisions of the Board shall be final agency decisions and shall not be subject to administrative appeal or administrative review.

(b) *Alternative Dispute Resolution (ADR) Functions.* (1) Board judges and personnel shall perform ADR related functions impartially, with procedural fairness, and with integrity and diligence.

(2) *Ex parte* communications with Board staff and judges limited to the nature, procedures, and availability of ADR through the Board are permitted and encouraged. Once parties have agreed to engage in ADR and have entered into an ADR agreement accepted by the Board, *ex parte* communications by Board neutrals, support staff and parties shall be as specified by any applicable agreements or protocols and as is consistent with law, integrity, and fairness.